

### Response

Applicant notes that a Notice of Appeal was filed for this application on 05/10/2005. Nevertheless, Applicant presents the following remarks for consideration by the Examiner. Applicant reserves all rights with respect to the Notice of Appeal.

In the Office Action dated 03/14/2005, claims 21, 23-26, 30-37, and 40-42 were rejected under 35 U.S.C. § 103(a) as being obvious over Legacy.com ,1999 ("Legacy") in view of Bunney (USP 6003032). Claims 22, 28, and 29 were rejected under 35 U.S.C. § 103(a) as being obvious over Legacy in view of Bunney and further in view of Manross (USP 6414663). Claims 38 and 39 were rejected under 35 U.S.C. § 103(a) as being obvious over Legacy in view of Bunney and further in view of Bergh (USP 6112186). Applicant traverses these rejections because a *prima facie* case of obviousness has not, and cannot be, established. To establish a *prima facie* case of obviousness, as specified in MPEP § 2143, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. Second, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success.

As a preliminary matter, Applicant notes that it is not clear that Legacy constitutes prior art. Indeed, Applicant notes that the date at the bottom of the copy sent by the Examiner with the present Office Action reads "3/1/05." The only other date shown on Legacy is "© Copyright 1999 All rights" on the first, second, and fourth pages. There is no indication, however, as to which portions of Legacy constituted prior art as of the claimed copyright date of 1999. While Legacy will hereinafter be discussed as prior art, such discussion is for purposes of argument only. Applicant reserves all rights with respect to Legacy's unclear status as prior art.

In the Amendment and Response that was filed February 27, 2004, and as again emphasized in the Amendment and Response that was filed July 30, 2004, Applicant

clarified that the memorial, as recited in Claims 21 and 43, must be “concrete,” noting that this term means that the memorial occupies physical space and has mass. (Amendment and Response dated 02/27/2004, p. 6). Nevertheless, the subsequent Office Actions, including the Office Action which is currently pending, argues with reference to Bunney that “In this case, my Forums can be the concrete memorial.” (e.g., Office Action dated 03/14/2005, p. 3). As discussed in the telephonic interview on July 27, 2004, and again re-iterated during the telephonic interview on April 19, 2005, the “my Forums” taught by Bunney is a feature of a web site. As such, it does not occupy physical space and/or does not have mass. Therefore, “my Forums” is not the “concrete memorial” recited in the pending claims. Accordingly, Bunney does not teach a “concrete memorial,” and a rejection on such grounds was improper.

In addition, and as discussed in the telephonic interviews on July 27, 2004 and April 19, 2005, as well as in prior Responses filed in this case, none of the references teach the recited limitation in independent Claim 21 of “an identifier on or near the concrete memorial for the deceased person, the identifier indicating to people visiting the concrete memorial that information related to the deceased person may be found on the on-line registry service.” As discussed above, Bunney contains no teaching or suggestion of a concrete memorial whatsoever, let alone an identifier on or near such a concrete memorial. Furthermore, to the extent that Manross discloses a concrete memorial, Manross does not teach or suggest an identifier on or near the concrete memorial indicating that information relating to a deceased person may be found on an on-line registry service. Indeed, neither Bunney, Manross, nor Bergh even remotely teach or suggest the on-line registry service recited in the pending claims. Assuming for the sake of argument only that Legacy constitutes prior art, and to the extent that Legacy remotely suggests an on-line registry service, Legacy fails to teach or suggest the recited identifier on or near a concrete memorial for the deceased person indicating to people visiting the concrete memorial that information related to the deceased person may be found on the on-line registry service. In short, the art of record fails to teach or suggest all of the limitations recited in Claim 21. Accordingly, the rejection of Claim 21 was improper and should be withdrawn.

With respect to claim 25, it should be noted, as it was noted by the Applicant in the Amendment and Response filed July 30, 2004, that the “seal” recited in the claim was intended to be read within the plain meaning of that term as an emblem, hallmark, or similar identifier. Applicant did not intend for “seal” to be read as something that prevents passage, such as a seal to prevent leakage or entry. Nevertheless, the Office Action states that Bunney teaches “the identifier is a seal” by teaching a password-protected web page, such that “a URL is a seal until a user can login by a correct password.” (Office Action dated 03/14/2005, p. 5). Clearly, the Examiner has ascribed the wrong definition to the term “seal” as recited in the claim. For at least the reason that the rejection ascribes the wrong definition to the claim term, the rejection was improper and should be withdrawn.

With respect to independent Claim 36, the art of record fails to teach or suggest the recited act of “visually indicating, on or near the physical memorial for the deceased person, that the on-line registry service is associated with the deceased person,” particularly in combination with the remaining limitations of that claim. In addition, as with Claim 21, the Examiner erroneously cites “my Forums” of Bunney as teaching a physical memorial. Thus, for similar reasons that Claim 21 is allowable over the art of record, so is Claim 36. The rejection should therefore be withdrawn.

Applicant further notes that independent Claim 43 recites “a seal on or near the concrete memorial for said deceased person, the seal indicating to people visiting the concrete memorial in the cemetery that information related to said deceased person may be found on the on-line registry service.” The art of record fails to teach or suggest this limitation, particularly in combination with the remaining limitations of the claim. Again, Applicant intended that the claim term “seal” be read having the plain meaning of that term as an emblem, hallmark, or similar identifier, not as a password-protected web page. Thus, for at least the same reasons that Claim 25 is allowable over the art of record, so is Claim 43. The rejection should therefore be withdrawn.


Furthermore, notwithstanding the failure of the cited references to teach or suggest all of the claim limitations, a *prima facie* case of obviousness has not, and cannot be established because there is no suggestion or motivation to combine the references. As discussed above, the requisite suggestion or motivation to combine is utterly absent. This conclusion is further reinforced because Bunney and Bergh are non-analogous art with respect to Legacy and Manross. Those of ordinary skill in any of the arts would recognize that the teachings of Bunney are in the art of web page oriented services, and the teachings of Bergh are in the art of data processing; whereas Legacy and Manross are in the art of death care products. Because the cited references represent such non-analogous art, and in accordance with MPEP 2141.01(a), it would not have been obvious to one of ordinary skill in the art to combine their teachings. As set forth in MPEP 2143.01, the mere fact that the references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. Accordingly, even if the cited references in combination taught or suggested all of the limitations of the present claims, which they do not, an obviousness rejection would be improper.

While Applicant has noted some of the significant differences between the pending claims and the cited references, it should be noted that other claimed features are not taught or suggested in the cited references. Furthermore, the dependent claims add other limitations that further distinguish over the cited references. Applicant reserves all rights and arguments with respect to those claimed features not expressly discussed above.

Applicant further notes that an Information Disclosure Statement (IDS) was filed on 11/22/2004 (the Certificate of Mailing erroneously states 11/22/2003), but the pending Office Action did not indicate that those references were considered. Attached for the Examiner's convenience is a copy of the prior IDS, as well a copy of the IDS that was filed on 05/10/2005. Kindly initial each Form 1449 to indicate that the Office has considered those references.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant submits that all pending claims overcome the rejections presented in the Office Action, and respectfully requests reconsideration and an early notice of allowance.

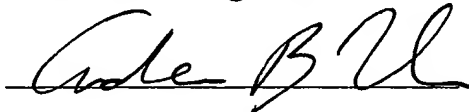
Respectfully Submitted,



Andrew B. Ulmer (Reg. No. 57,003)  
Frost Brown Todd LLC  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202-4182  
513-369-4811 (direct)  
513-651-6981 (fax)

**Certificate of Mailing**

The undersigned certifies that this correspondence was deposited with the U.S. Postal Service with sufficient postage as first class mail and addressed to "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on this 28<sup>th</sup> day of June, 2005.



CinLibrary/1519460.1